

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

NOTICE OF REMOVAL

Defendant USAA Casualty Insurance Company (“USAA CIC”), pursuant to 28 U.S.C. §§ 1332, 1441, and 1446, removes the above-captioned action pending in the District Court of Oklahoma County, Oklahoma, to the United States District Court for the Western District of Oklahoma. The grounds for removal are as follows:

1. Plaintiff commenced this action entitled *Constance Hanscom v. USAA Casualty Insurance Company*, Case No. CJ-2017-871 (the “Action”), by filing the Petition with the District Court of Oklahoma County, Oklahoma (hereinafter the “Complaint”), on February 16, 2017. *See* Ex. 1, Compl.

2. The Complaint purports to state claims against USAA CIC for breach of contract (First Cause of Action), Negligence in the Procurement of Insurance (Second Cause of Action), Breach of the Duty of Good Faith & Fair Dealing (Third Cause of Action), Constructive Fraud and Negligent Misrepresentation (Fourth Cause of Action) and Negligence (Fifth Cause of Action). In each count, Plaintiff seeks against USAA

CIC damages in an amount in excess of \$75,000, exclusive of attorney's fees, costs, and interest.

3. The Complaint in the Action is attached as Exhibit 1. A copy of the Docket Sheet, Oklahoma County, Case No. CJ-2017-871, is attached as Exhibit 2. The summons served on USAA CIC is attached as Exhibit 3. A docket entry filed in Oklahoma County District Court entitled Summons Returned is attached as Exhibit 4. Plaintiff's attorney's entry of appearance filed in Oklahoma County District Court is attached as Exhibit 5. Neither Exhibit 4 nor Exhibit 5 was served on USAA CIC, but is available on the Oklahoma County Docket Sheet. Pursuant to 28 U.S.C. § 1446(a), USAA CIC has attached all process, pleadings, and orders served upon it in this case. There are no motions pending before the Oklahoma County District Court in this matter, nor are any hearings currently set.

4. As set forth more fully below, this case is properly removed to this Court under 28 U.S.C. §§ 1332, 1441, and 1446 because USAA CIC has satisfied the procedural requirements for removal and this Court has subject matter jurisdiction under 28 U.S.C. § 1332.

I. USAA CIC has satisfied the procedural requirements for removal.

5. USAA CIC was served by the Corporation Company on February 22, 2017. *See* Ex. 3, Service of Process on USAA CIC. Thus, USAA CIC is timely removing this case to the U.S. District Court for the Western District of Oklahoma.

6. Under 28 U.S.C. § 1446(a), the United States District Court for the Western District of Oklahoma is the appropriate court for filing this Notice of Removal from the

District Court of Oklahoma County, Oklahoma, where the Action is pending. *See* 28 U.S.C. § 116(c).

7. Venue is proper pursuant to 28 U.S.C. §§ 1441(a) and 1391(b).

II. Removal is proper because this Court has subject matter jurisdiction under 28 U.S.C. § 1332.

8. This Court has original jurisdiction over this action under the diversity of citizenship provision contained in 28 U.S.C. § 1332(a) because this is a civil action (A) where the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and (B) between citizens of different states. Thus, the Action may be removed to this Court by USAA CIC pursuant to 28 U.S.C. § 1441(a).

A. The amount in controversy requirement is satisfied.

9. It is apparent from the face of the Complaint that Plaintiff seeks recovery of an amount in excess of \$75,000, exclusive of interest and costs. *See* Ex. 1, Compl. ¶ 13 (“Plaintiff has sustained financial losses, mental and emotional distress and has been damaged in an amount *in excess of \$75,000.00*, exclusive of attorney’s fees, costs and interest.”) (emphasis added). In fact, Plaintiff alleges she was damaged in excess of \$75,000.00, exclusive of attorney’s fees, costs, and interests on each of the claims in her Complaint. *See* Ex. 1, Compl. ¶¶ 27, 35, 44, 51.

10. The allegations regarding damages in the Complaint are sufficient to demonstrate that the amount in controversy requirement for diversity jurisdiction has been met. 28 U.S.C. § 1446(c)(2).

B. Complete diversity of citizenship exists between Plaintiff and USAA CIC.

11. USAA CIC is a corporation incorporated in Texas with its principal place of business in San Antonio, Texas. Ex. 1, Compl. ¶ 2. For purposes of determining diversity jurisdiction, USAA CIC is therefore a citizen of Texas.

12. Per the Complaint, Plaintiff is a resident of Oklahoma. *See* Ex. 1, Compl. ¶ 1. Residence, while not equivalent to citizenship, is *prima facie* evidence of domicile. *See State Farm Mut. Auto. Ins. Co. v. Dyer*, 19 F.3d 514, 520 (10th Cir. 1994). Domicile is equivalent to citizenship for purposes of diversity jurisdiction. *See Smith v. Cummings*, 445 F.3d 1254, 1259-60 (10th Cir. 2006). Based on the foregoing and upon information and belief, Plaintiff is a citizen of Oklahoma.

13. USAA CIC reserves the right to amend or supplement this Notice of Removal.

14. USAA CIC reserves all defenses, including, without limitation, those set forth in Fed. R. Civ. P. 12(b).

15. USAA CIC has not yet filed a responsive pleading and reserves the right to file its responsive pleading in accordance with Fed. R. Civ. P. 81(c)(2)(C), or as otherwise extended by Order of this Court.

16. Written notice of the filing of this Notice of Removal will be given to Plaintiff and the state court promptly after the filing of the Notice of Removal pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, USAA CIC removes this Action to this Court under 28 U.S.C. §§ 1332, 1441, and 1446, and invokes this Court's jurisdiction.

Respectfully submitted this 9th day of March, 2017.

s/Jodi W. Dishman

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ATTORNEY FOR DEFENDANT USAA
CASUALTY INSURANCE COMPANY

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of March, 2017, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing. Based on the records currently on file, the Clerk of Court will transmit a Notice of Electronic Filing to the following registrants:

Jason Waddell
222 NW 13th St
Oklahoma City, OK 73103
Jason@jasonwaddelllaw.com

ATTORNEYS FOR PLAINTIFF

Additionally, I hereby certify that a true and correct copy of the above and foregoing was sent by U.S. Postal Service this 9th day of March 2017, to:

Jason Waddell
222 NW 13th St
Oklahoma City OK 73103
Jason@jasonwaddelllaw.com

ATTORNEYS FOR PLAINTIFF

/s/ Jodi W. Dishman
Jodi W. Dishman